

ITEM 5
TEST CLAIM
FINAL STAFF ANALYSIS

Education Code Sections 1241.5, 17150/17850, 33127, 33128, 33129, 33132, 35035, 42100, 42101, 42103, 42122, 42123, 42124, 42125, 42126, 42127, 42127.1, 42127.2, 42127.3, 42127.4, 42127.5, 42127.6, 42127.9, 42128, 42129, 42130, 42131, 42133, 42140, 42141, 42142, and 42637 and Government Code Section 3540.2

Statutes of 1975, Chapter 125
Statutes of 1977, Chapter 36
Statutes of 1979, Chapters 221 and 282
Statutes of 1980, Chapter 1354
Statutes of 1981, Chapters 100 and 1093
Statutes of 1984, Chapter 134
Statutes of 1985, Chapters 185 and 741
Statutes of 1986, Chapter 1150
Statutes of 1987, Chapter 917, 1025 and 1452
Statutes of 1988, Chapters 1461 and 1462
Statutes of 1989, Chapter 1256
Statutes of 1990, Chapter 525
Statutes of 1991, Chapter 1213
Statutes of 1992, Chapter 323
Statutes of 1993, Chapters 237, 923 and 924
Statutes of 1994, Chapter 650 and 1002
Statutes of 1995, Chapter 525 and 530
Statutes of 1996, Chapters 227, 1071 and 1158

California Code of Regulations, Title 5, Sections 15440-15466

California Department of Education Fiscal Management Advisories 86-02, 86-03, 87-01, 88-01, 88-10, 92-03 and Management Advisories 92-06, 92-07, 92-08, 93-02, 94-01, 94-02, 94-07, 95-03, 95-04, 95-07, 96-08

*School District Budget Process, Financial Statements,
and County Office Oversight*

Executive Summary

Background

The test claim alleges reimbursable state mandated costs for the activities performed by school districts and county offices of education for periodically preparing and submitting various budget and financial reports to the state, and for the county office of education to ensure the reporting compliance of school districts in their jurisdiction.

The claim arises from enactments or amendments to thirty-two budget-related Education Code sections, Government Code section 3540.2, and California Code of Regulations, Title 5, sections 15440-15466, referred to collectively as the test claim legislation. Claimant also maintains that seventeen California Department of Education (CDE) management advisory letters published between 1986 and 1996 all constitute executive orders imposing a reimbursable state mandate. Several of the named statutes were already denied under two previous test claims, *CSM-4354, California School Accounting Requirements* and *CSM-4389, Budgeting Criteria and Standards*.

Claimant's Position

Claimant, Alameda County Office of Education, contends that the school district budget process, financial statements and county office oversight, as set forth in the test claim legislation and executive orders, results in school districts and county offices of education incurring costs mandated by the state, as defined in Government Code section 17514. Claimant contends that the test claim legislation and executive orders create new state-mandated duties related to the uniquely governmental function of providing public education to children and that these statutes apply only to public schools and do not apply generally to all residents and entities in the state.

State Agency Position

The Department of Finance's (DOF's) overall response to the test claim is that no reimbursable state mandate exists because none of the claimed statutes constitute a new program or higher level of service or impose costs mandated by the state, under Government Code section 17514 or section 6, article XIII B of the California Constitution. DOF has several arguments supporting its contention. Specifically, DOF asserts that several of the challenged statutes are not reimbursable mandates because they existed under prior law; the Commission previously heard test claims based on several of the claimed statutes and found that budget reporting requirements of school districts and County offices of education do not constitute a state mandate because they are not new; and, some of the claimed code sections and executive orders do not require activities to be performed by school districts or County offices of education.

Regarding the remaining provisions, DOF contends that the reporting requirements and budget processes do not create a higher level of service, but instead constitute the long-standing traditional requirements of County offices of education and school districts to report and account to the Superintendent of Public Instruction.

Staff Analysis

The test claim legislation makes some changes to budget and financial statements as compared to prior law. The individual issues addressed by this claim are numerous. The analysis for whether the individual claimed provisions are reimbursable state mandates generally hinges on whether the claimed section imposes a new activity that was not required under prior law. Staff finds that the basic requirements for schools to engage in budgetary activities were contained in prior law. However, staff finds that some of the activities required under the test claim legislation are new and impose costs mandated by the state, thus constituting a reimbursable state mandate.

Conclusion and Staff Recommendation

Staff concludes that Education Code sections 42100, 42127, 42127.5, 42127.6, 42128 and 42131 and Government Code section 3540.2 require some new activities, as specified, which constitute new programs or higher levels of service within existing programs upon school districts and/or county offices of education within the meaning of section 6, article XIII B of the California Constitution and impose costs mandated by the state pursuant to Government Code section

17514. Accordingly, staff recommends that the Commission approve this test claim for the following specific new activities required to comply with the budget process:

School District Activities:

- Sending a statement of receipts and expenditures for the preceding fiscal year to the county superintendent of schools. (Ed. Code, § 42100.)
- Adjusting for the change in deadline for adopting the revised school district budget, from on or before September 15, to on or before September 8. (Ed. Code, § 42127.)
- Making available for public review, not later than 45 days after the Governor signs the annual Budget Act, any revisions in revenues and expenditures that it has made to its budget to reflect the funding made available by that Budget Act. (Ed. Code, § 42127.)
- Drafting a statement of correction when the district incurs a negative balance. (Ed. Code, § 42127.5.)
- Certifying in writing, either positively, qualifiedly or negatively, within 45 days after the close of the period being reported, whether the school district is able to meet its financial obligations for the remainder of the fiscal year and, based on current forecasts, for the subsequent fiscal year. (Ed. Code, § 42131.)
- Filing with the county superintendent of schools a copy of the financial obligation certification, and a copy of the report submitted to the district governing board pursuant to Section 42130. (Ed. Code, § 42131.)
- Providing to the county superintendent of schools, the Controller, and the Superintendent of Public Instruction, no later than June 1, financial statement projections of the district's fund and cash balances through June 30 for the period ending April 30. This is only applicable to a school district that has a qualified or negative financial certification. (Ed. Code, § 42131.)
- Providing the county superintendent of schools with all information relevant to the financial impact of any collective bargaining agreement, in the format developed by the Superintendent of Public Instruction, as specifically requested by the county office of education. This is only applicable to a school district that has a qualified or negative financial certification. (Gov. Code, § 3540.2.)

County Office of Education Activities:

- Verifying the mathematical accuracy of the school district statement of receipts and expenditures for the preceding fiscal year. (Ed. Code, § 42100.)
- Sending a copy of the verified school district statement of receipts and expenditures for the preceding fiscal year to the Superintendent of Public Instruction. (Ed. Code, § 42100.)
- Adjusting for the change in deadline for approval of the revised school district budget, from on or before November 1, to on or before October 8. (Ed. Code, § 42127.)
- Providing a list to the Superintendent of Public Instruction, on or before September 22, identifying all school districts for which budgets may be disapproved. (Ed. Code, § 42127.)

- Providing a report to the Superintendent of Public Instruction, on or before October 8, identifying all school districts for which budgets have been disapproved. This report shall include a copy of the written response transmitted to each of those districts when their budget was disapproved. (Ed. Code, § 42127.)
- Notifying the Superintendent of Public Instruction in writing if a county superintendent of schools determines that a school district is unable to meet its financial obligations for the current or two subsequent fiscal years, or if the district has a qualified or negative certification pursuant to Section 42131. (Ed. Code, § 42127.6.)
- Notifying appropriate county officials that he or she shall not approve any warrants issued by the school district, whenever a school district has not made a budget or filed the interim reports required by section 42130. (Ed. Code, § 42128.)
- Changing the school district financial certification to negative or qualified, as appropriate, if a county office of education receives a positive certification from school district, when a negative or qualified certification should have been filed. Providing notice of that action to the governing board of the school district and to the Superintendent of Public Instruction, within 75 days after the close of the applicable reporting period. (Ed. Code, § 42131.)
- Sending copies of any certification in which the governing board is unable to certify unqualifiedly that financial obligations will be met, and a copy of the report submitted to the governing board pursuant to Section 42130 to the Controller and the Superintendent of Public Instruction at the time of the certification, together with a completed transmittal form provided by the Superintendent of Public Instruction. (Ed. Code, § 42131.)
- Submitting to the Superintendent of Public Instruction and the Controller the county superintendent's comments on those school district financial certifications that are classified as qualified or negative, and reporting any action proposed or taken, within 75 days after the close of the applicable reporting period. (Ed. Code, § 42131.)
- Reporting to the Controller and the Superintendent of Public Instruction as to whether the governing board of each of the school districts under their jurisdiction has submitted the certification required, within 75 days after the close of the applicable reporting period. That report shall account for all districts under the jurisdiction of the county office of education and indicate the type of certification filed by each district. (Ed. Code, § 42131.)

Staff recommends denial of all remaining test claim issues, code sections and executive orders because they do not constitute a new program or higher level of service, and do not impose costs mandated by the state.

Claimant

Alameda County Office of Education

Chronology

12/30/97	Claimant files test claim with Commission
01/09/98	Commission staff determines test claim is incomplete
01/13/98	Claimant files response
01/27/98	Commission staff finds test claim is complete
03/26/98	Commission staff finds test claim disputed
05/14/98	Claimant files a test claim amendment to sever portions of the claim overlapping <i>CSM 97-TC-17 – Standardized Account Code Structure</i>
05/28/98	DOF files response to test claim
06/10/98	Claimant files letter declining to file rebuttal to DOF response
07/28/98	Claimant files second test claim amendment to sever portions of the claim overlapping <i>CSM 4502 – Employee Benefits Disclosure</i>
07/25/00	Commission staff issues Draft Staff Analysis
08/28/00	DOF files response to Draft Staff Analysis
08/30/00	Claimant files response to Draft Staff Analysis

Background

The test claim alleges reimbursable state mandated costs for the activities performed by school districts and county offices of education for periodically preparing and submitting various budget and financial reports to the state, and for the county office of education to ensure the reporting compliance of school districts in their jurisdiction.

The claim arises from enactments or amendments to thirty-two budget-related Education Code sections, Government Code section 3540.2, and California Code of Regulations, Title 5, sections 15440-15466, referred to collectively as the test claim legislation. Claimant also maintains that seventeen California Department of Education (CDE) management advisory letters published between 1986 and 1996 all constitute executive orders imposing a reimbursable state mandate. Several of the named statutes were already denied in previous test claims, *CSM-4354, California School Accounting Requirements* and *CSM-4389, Budgeting Criteria and Standards*.

Claimant's Position

Claimant contends that the school district budget process, financial statements and county office oversight, as set forth in the test claim legislation and executive orders, results in school districts and county offices of education incurring costs mandated by the state, as defined in Government Code section 17514. Claimant contends that the test claim legislation and executive orders create new state-mandated duties related to the uniquely governmental function of providing public education to children and these statutes apply only to public schools and do not apply generally to all residents and entities in the state.

Claimant's individual contentions regarding each of the claimed statutes, code sections or executive orders will be restated and addressed more fully in the "Staff Analysis" section.

State Agency Position

The Department of Finance's (DOF's) overall response to the test claim is that no reimbursable state mandate exists because none of the claimed statutes constitute a new program or higher level of service, or impose costs mandated by the state, under Government Code section 17514 or section 6, article XIII B of the California Constitution. DOF has four main arguments supporting its contention:

- DOF asserts that several of the challenged statutes are not reimbursable mandates because they existed under prior law, as enacted before January 1, 1975. Specifically, DOF asserts that Education Code sections 35035, 42100, 42101, 42103, 42122, 42123, 42124, 42125, 42126, 42127, 42128, 42637 all were enacted prior to 1975 and were simply re-numbered by Statutes of 1976, Chapter 1010.
- DOF asserts that the Commission previously heard test claims based on several of the claimed statutes and found that budget reporting requirements of school districts and County offices of education do not constitute a state mandate because they are not new. In the Statement of Decision for *CSM-4354, California School Accounting Requirements*, effective March 28, 1991, the Commission did not find a reimbursable state mandate for Education Code sections 1621, 42122, 42122.5, 42125, and 42126. In the Statement of Decision for *CSM-4389, Budgeting Criteria and Standards*, adopted August 22, 1991, the Commission did not find a reimbursable state mandate for school district budget activities in Education Code sections 33127, 33128, 33129, 33131, 33132, 42127, and 42637.
- DOF asserts that claimed Education Code sections 1241.5, 17150, 42128, and 42129 and the CDE Management Advisories do not require activities to be performed by school districts or County offices of education.
- Regarding the remaining provisions, DOF contends that the reporting requirements and budget processes do not create a higher level of service to the public, but instead constitute the long-standing traditional requirements of County offices of education and school districts to report and account to the Superintendent of Public Instruction.

Staff Analysis

Issue:

Do the subject statutes and executive orders, which include regulations and fiscal management advisories, impose a new program or higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution¹ and costs mandated by the state pursuant to Government Code section 17514² by requiring new or additional budgetary, financial statement, and related fiscal management procedures?

¹ Section 6, article XIII B of the California Constitution provides: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates:

(a) Legislative mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

² Government Code section 17514 provides: "Costs mandated by the state means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January

A test claim statute or executive order may impose a reimbursable state mandated program if statutory and regulatory language directs or obligates an activity or task upon local governmental entities. In addition, the required activity or task must be new, constituting a “new program,” or create an increased or “higher level of service” over the previously required level of service. The courts have defined a “new program” or “higher level of service” as a program that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy but does not apply generally to all residents and entities in the state. To determine if a required activity is new or imposes a higher level of service, a comparison must be drawn between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation. Finally, the newly required activity or increased level of service must impose costs mandated by the state.³

The test claim legislation and regulations involve the administration of the school district budget process, financial statements and county office of education oversight. Public education in California is a peculiarly governmental function administered by local agencies as a service to the public.⁴ Moreover, the test claim legislation, which requires school districts and county offices of education to administer the budget process, imposes unique requirements upon school districts that do not apply generally to all residents and entities of the state. Thus, staff finds the administration of the school district budget process by school districts and county offices of education constitutes a “program” within the meaning of section 6, article XIII B of the California Constitution.⁵

However, the inquiry must continue to determine if the activities are new or impose a higher level of service and if so, if there are costs mandated by the state, as defined by Government Code section 17514. The claimant contends that all of the test claim legislation and regulations impose new programs or higher levels of service upon school districts and County offices of education by requiring specific activities related to the adoption and administration of school district budgets.

Under prior law, school districts and County offices of education were required to engage in annual budget activities.⁶ The subject test claim legislation makes some changes to school district budget requirements as compared to prior law. The individual issues addressed by this claim are numerous but all meet the test of imposing unique requirements that do not apply generally to all residents and entities in the state. The analysis of whether the individual provisions are reimbursable state mandates generally hinges on whether the claimed section requires a local agency to perform a new activity or higher level service than that required under prior law.

1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

³ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

⁴ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 172 states “although numerous private schools exist, education in our society is considered to be a peculiarly governmental function ... administered by local agencies to provide service to the public.”

⁵ *Id.*

⁶ Renumbered and reenacted by Statutes of 1976, Chapter 1010, from 1959 Education Code sections 939, 20501 et seq., and 20601 et seq.

The test claim analysis is presented in four sections to categorize the test claim provisions in manageable components, as follows:

- I. Test Claim Legislation Severed To Consolidate With Overlapping Test Claims
- II. Test Claim Legislation Previously Heard By The Commission
- III. Remaining Test Claim Legislation
- IV. Test Claim Executive Orders

I. Test Claim Legislation Severed To Consolidate With Overlapping Test Claims

Claimant requested that the Commission sever and consolidate some of the test claim allegations into two other pending test claims:

- Statutes of 1993, Chapter 237, Statutes of 1995, Chapter 525, sections 12 and 13, and CDE Management Advisories 94-01 and 95-04 were severed and consolidated into test claim *97-TC-17, Standardized Account Code Structure*, filed by Brentwood Union School District.
- Education Code sections 42140, 42141, and 42142, as amended by Statutes of 1994, Chapter 650, Statutes of 1995, Chapter 525, section 11, and Statutes of 1996, Chapter 1158, and CDE Management Advisories 95-03 and 95-07 were severed and consolidated into test claim *CSM-4502, Employee Benefits Disclosure*, filed by Clovis Unified School District.

Accordingly, staff finds that these code sections need not be addressed in the analysis of this test claim.

II. Test Claim Legislation Previously Heard By The Commission

Under Government Code section 17521, “test claim” means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. The issue of whether Education Code sections 33127, 33128, 33129, 33132, 42122, 42125, 42126, 42127, and 42637 constituted reimbursable state mandates was already heard and denied by the Commission in two earlier test claims.⁷ Except for section 42127, no substantive amendments were made to these sections since the decisions were issued; therefore, staff finds these code sections need not be addressed as part of this test claim. However, they will be discussed briefly.

Claimant asserts that the previous Commission decisions are not applicable because they “were based on code sections since amended, repealed or replaced.”⁸ In fact, staff finds that the Legislature repealed section 33132 in its entirety in Statutes of 1994, Chapter 840; therefore this code section could not impose a mandate during the reimbursement period for the present test claim. Of the remaining eight statutes previously heard under other test claims, all but Education Code sections 33128 and 42127 are entirely unchanged as compared to when the original test claims were filed and ultimately decided. Amended section 33128 remains a directive to the State Board of Education and does not impose any new obligations. Amendments made to

⁷ *CSM-4354, California School Accounting Requirements* and *CSM-4389, Budgeting Criteria and Standards*, found in attachments to DOF’s response to the test claim.

⁸ Test Claim, page 114.

section 42127 subsequent to the issuance of the Commission's Statement of Decision in *CSM-4389, Budgeting Criteria and Standards* will be analyzed in the next section.

In addition, regarding the previously decided test claims, claimant asserts that:

“each decision was based on the conclusion that a “program” had not changed, rather than measuring the “increased costs” or “higher level of service” of an existing program, which constitutes a palpable error of law.”⁹

Staff finds that the Commission addressed the issues of higher level of service and increased costs in both of the earlier test claims, finding that no higher level of service existed under the claimed statutes. The Commission's Statements of Decision were determined in accordance with the California Supreme Court's decision in *County of Los Angeles* which held that increased costs are not tantamount to an increased level of service.¹⁰ Based on the foregoing, staff finds Education Code sections 33127, 33128, 33129, 33132, 42122, 42125, 42126, and 42637 are not properly included in this current test claim.

III. Remaining Test Claim Legislation

A. Renumbering, Reenactment, Restatements

At the outset staff notes that many of the code sections included in the test claim legislation were in effect well before the enactment of the test claim legislation, but as a result of the test claim legislation were either renumbered or restated in a “newly enacted” code section. Staff makes an overall finding, in accordance with Education Code section 3, that under these circumstances a renumbered or restated statute, originally enacted prior to the enactment of the test claim legislation will not be considered to be a newly enacted provision. Education Code section 3 provides:

“The provisions of this code, insofar as they are substantially the same as existing statutory provisions relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments.”

The rationale behind Education Code section 3 is in accordance with the holding of *In re Martin's Estate* (1908) 153 Cal. 225, 229, which explains the general rule of statutory construction for repeal, replacement and renumbering, as follows:

“Where there is an express repeal of an existing statute, and a re-enactment of it at the same time, or a repeal and a re-enactment of a portion of it, the re-enactment neutralizes the repeal so far as the old law is continued in force. It operates without interruption where the re-enactment takes effect at the same time.”¹¹

The holding of *In re Martin's Estate* is consistent with a California Attorney General Opinion¹² which explains that where there is express repeal of existing statute and re-enactment of it at the same time, re-enactment neutralizes repeal as far as the old law continues in force, and it operates without interruption where reenactment takes effect at the same time.

⁹ *Id.*

¹⁰ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, as discussed in the *CSM-4354* statement of decision, page 10, and the *CSM-4389* statement of decision, page 12, found in attachments to DOF's response.

¹¹ *In re Martin's Estate* (1908) 153 Cal. 225, 229.

¹² 15 Ops.Cal.Atty.Gen. 49 (1950).

Based upon the foregoing rules of statutory construction, staff finds that a renumbering, reenactment or restatement of prior law does not constitute a reimbursable state mandate to the extent that the provisions and associated activities remain unchanged.

B. Analyses of the Remaining Test Claim Legislation

Each of the remaining claimed code sections are analyzed individually below to determine if they are new or impose a higher level of service and if so, if there are costs mandated by the state.

1. Education Code section 1241.5.¹³ This section provides that the county superintendent of schools may audit the expenditures and internal controls of school districts and shall report findings and recommendations to the district governing board. Within 15 days of receipt of the report, the governing board shall notify the county superintendent of its response. Upon review of the governing board's response, the county superintendent has discretion to revoke the district's authority to issue warrants pursuant to Education Code section 42650.

Staff notes that the language of the statute is optional in terms of activities imposed on the county superintendent, i.e. "the county superintendent *may* audit;" "*If*" the county superintendent chooses to make an audit of a school district, "*then*" the superintendent has certain reporting and follow-up duties. DOF asserts that the duties imposed by this section are voluntary, not mandatory. Staff agrees, insofar as the statute impacts county superintendents but disagrees as to the impact on school districts. However, staff finds that the school district governing board had a duty under prior law to respond to audit reports made under section 1241.5, as provided for in Education Code section 42637:

"If at any time during a fiscal year the county superintendent of schools concludes that the expenditures of any school district within his jurisdiction are likely to exceed the anticipated income for the district for that fiscal year, he shall notify such district in writing of such conclusion and he may conduct a comprehensive review of the financial and budgetary conditions of the district. The superintendent shall report his finding and recommendation to the governing board of the district ... at a public meeting of the governing board. The governing board shall, no later than 15 days after the receipt of such report, notify the county superintendent of schools of its proposed actions on his recommendations."¹⁴

Therefore, staff finds that duties under section 1241.5 for school districts to respond within 15 days to any comprehensive review of the financial and budgetary conditions of the district were required under prior law. Based on the foregoing, staff finds Education Code section 1241.5 does not constitute a new program or higher level of service, and does not impose costs mandated by the state.

2. Education Code section 17150.¹⁵ This section provides that the school district shall notify the county superintendent of schools and the county auditor, upon approval of the district governing board, to proceed with issuing revenue bonds, including repayment schedules and evidence of

¹³ Statutes of 1976, Chapter 273, enacted Education Code section 21107.6, later renumbered as section 42637.5. Statutes of 1987, Chapter 1452 amended and renumbered section 42637.5 as section 1241.5.

¹⁴ Statutes of 1976, Chapter 1010, which renumbered and reenacted former Education Code section 21107.5 as section 42637.

¹⁵ Education Code section 17150 is construed as a restatement of existing provisions in former Education Code section 17850.

ability to repay the debt. Upon approval by the county board of education to issue bonds, the county superintendent of schools shall provide notice to the Superintendent of Public Instruction.

Education Code section 17150 only describes activities that a district or county superintendent of schools must perform in order to issue revenue bonds. The activity of approving and issuing revenue bonds is not mandated, but is undertaken at the discretion of local educational agencies. Thus, staff finds that any follow-up notification required by Education Code section 17150, stems from the undertaking of an optional activity and does not constitute a new program or higher level of service, and does not impose costs mandated by the state.

3. Education Code sections 35035, subdivision (g) and 42130. Section 35035, subdivision (g) provides that the superintendent of each school district shall submit financial and budgetary reports to the governing board as required by section 42130. Section 42130 provides that the superintendent of each school district shall submit two annual financial and budgetary status reports to be approved by the district governing board and maintained for public review.

Statutes of 1976, Chapter 1010, renumbered and reenacted former Education Code section 939 as Education Code section 35035. Under section 939 the superintendent of each school district, in addition to any other powers and duties granted, was required to submit reports showing the financial and budgetary conditions of the district, including outstanding obligations, to the governing board of the school district at least once every three months during the school year. Section 35035, as amended by Statutes of 1991, Chapter 1213, now requires the submission of financial and budgetary reports as required by section 42130. Section 42130 requires the superintendent of each school district to submit two reports to the governing board each fiscal year in a format prescribed by the Superintendent of Public Instruction, based upon the standards and criteria developed by the State Board of Education. Staff finds that none of these requirements exceeds prior law, and in fact, the amendments actually reduce the number of reports required. Accordingly, staff finds that Education Code section 35035 does not constitute a new program or higher level of service, and does not impose costs mandated by the state.

Section 42130, although added by Statutes of 1991, Chapter 1213, is substantially a restatement and consolidation of prior law found in section 35035 and related code sections. For example, Education Code section 42100,¹⁶ further discussed below, provided that:

“the governing board of each school district shall prepare and keep on file for public inspection a statement of all receipts and expenditures of the district for the preceding fiscal year and a statement of the estimated total expenses for the district for the current fiscal year.”

In addition, prior law, under Education Code section 42101¹⁷ also discussed further below, required that the statements of receipts and expenditures be in the form prescribed by the Superintendent of Public Instruction. Therefore, staff finds that none of the requirements of section 42130 exceeds prior law. Accordingly, staff finds that the activities required under sections 35035, subdivision (g) and 42130 do not constitute a new program or higher level of service, and do not impose costs mandated by the state.

4. Education Code section 42100. This section provides that on or before September 15, the governing board of each school district shall approve, on a form prescribed by the Superintendent of Public Instruction, an annual statement of all receipts and expenditures of the

¹⁶ Former Education Code section 20501, as renumbered and reenacted by Statutes of 1976, Chapter 1010.

¹⁷ Former Education Code section 20502, as renumbered and reenacted by Statutes of 1976, Chapter 1010.

district for the preceding fiscal year and shall file the statement with the county superintendent of schools. This section further provides that on or before October 15, the county superintendent of schools shall verify the mathematical accuracy of the statement and shall transmit a copy to the Superintendent of Public Instruction.

Statutes of 1976, Chapter 1010, renumbered and reenacted former Education Code section 20501 as Education Code section 42100. Under former Education Code section 20501 the law required that:

“On or before the 15th day of August of each year the governing board of each school district shall prepare and keep on file for public inspection a statement of all receipts and expenditures of the district for the preceding fiscal year and a statement of the estimated total expenses for the district for the current fiscal year.”

Education Code section 42100 was amended by Statutes of 1988, Chapter 1461, which added the requirements that the annual statement be in the form prescribed by the Superintendent of Public Instruction, filed with the county superintendent of schools and that the county superintendent of schools must verify the accuracy of the statement and transmit a copy to the Superintendent of Public Instruction. As will be explained further in the following section, staff finds that this requirement that the annual statement be in the form prescribed by the Superintendent of Public Instruction was not new, but resulted from a consolidation of the prior law found under Education Code section 42101.

Thus, staff finds that the basic activity of the district governing board preparing a statement of receipts and expenditures on a form prescribed by the Superintendent of Public Instruction does not constitute a new program or higher level of service, and does not impose costs mandated by the state. Staff further finds that the change in deadline from August 15 to September 15 is in favor of the districts and does not impose increased costs. However, staff does find that Education Code section 42100 imposes a new program or higher level of service, and costs mandated by the state, for the following activities:

School District Activity:

- Sending a statement of receipts and expenditures for the preceding fiscal year to their county superintendent of schools.

County Office of Education Activities:

- Verifying the mathematical accuracy of the school district statement of receipts and expenditures for the preceding fiscal year.
- Sending a copy of the verified school district statement of receipts and expenditures for the preceding fiscal year to the Superintendent of Public Instruction.

5. Education Code section 42101. This section provided that the annual statement of receipts and expenditures shall be in the form prescribed by the Superintendent of Public Instruction.

Statutes of 1976, Chapter 1010, renumbered and reenacted former Education Code section 20502 as Education Code section 42101. Section 42101 was repealed by Statutes of 1999, Chapter 646. The repeal was to eliminate the duplicative provision created when Education Code section 42100 was amended by Statutes of 1988, Chapter 1461, adding the requirement that the annual statement be in the form prescribed by the Superintendent of Public Instruction. Staff finds the provisions of section 42101 existed under prior law and continue under section 42100. Thus,

staff finds that section 42101 does not constitute a new program or higher level of service, and does not impose costs mandated by the state.

6. Education Code section 42103. This section provides that the governing board of each school district shall hold a public hearing on the proposed budget on or before the date specified in section 42127, but not less than three working days following availability of the proposed budget for public inspection. In addition, this section provides that the proposed budget shall show expenditures, cash balances, and all revenues as required to be tabulated in sections 42122 and 42123, and shall also include an estimate of those figures for the preceding fiscal year. This section further provides that any tax statement submitted by the governing board, district tax requirement or superintendent budget recommendations shall be made available for public inspection. With the requirement that notification of the date, time and location of the public hearing, as well as the location of the public copy of the proposed budget shall be published in a newspaper of general circulation.

Statutes of 1976, Chapter 1010, renumbered and reenacted former Education Code section 20504 as Education Code section 42103. Section 42103 was repealed and reenacted by Statutes of 1981, Chapter 100; however, the substance of the statute, describing the requirements for public hearing and publication of the proposed school district budget, remained largely unchanged. Prior law required publication and public hearing on the budget for the ensuing school year, showing program expenditures, cash balances, and all appropriations from the state as required to be tabulated in sections 42122 and 42123 for the ensuing and last preceding fiscal year, and the district tax requirement for the school year to which the budget is intended to apply. The deadline for budget publication was the last week in July of each year, and the hearing was to be held during the first week in August at a place conveniently accessible to the residents of the district. Prior law also provided that the budget shall not be finally adopted by the district governing board until after the public hearing.

Prior law required publication of the entire budget in a newspaper of general circulation, plus a notice of the date and location of the public hearing. Current law requires publication of the notice of public hearing, plus notification of the location and times where the budget is available for public inspection. Staff finds that the amendments to section 42103 reduced school district activities, as the district no longer has to pay for newspaper publication of the entire budget, but instead now must only provide for a smaller notice and make one copy of the budget available for public inspection before the public hearing. The deadlines for publication and hearing were changed by amendment to correspond with dates listed in Education Code section 42127, all of which are later than the deadlines established by prior law, and therefore allows the districts additional time to comply with the notice requirements. Based on the foregoing, staff finds that Education Code section 42103 does not constitute a new program or higher level of service, and does not impose costs mandated by the state.

7. Education Code section 42123. This section provides that each budget shall be itemized to set forth the necessary revenues and expenditures in each fund to operate the public schools of the district as authorized by law and on forms prescribed by the Superintendent of Public Instruction.

Statutes of 1976, Chapter 1010, renumbered and reenacted former Education Code section 20603 as Education Code section 42123. Statutes of 1980, Chapter 1354 added a second paragraph to section 42123. However, the second paragraph was subsequently deleted by Statutes of 1986, Chapter 1150, a decade before the test claim reimbursement period, leaving section 42123 with

no substantive changes to prior law. Thus, staff finds that the requirement for each school district budget to be itemized and prepared on state forms is identical to prior law. Therefore, staff finds Education Code section 42123 does not constitute a new program or higher level of service, and does not impose costs mandated by the state.

8. Education Code section 42124. This section provides that the school district budget may contain an amount known as the general reserve.

Statutes of 1976, Chapter 1010, renumbered and reenacted former Education Code section 20604 as current Education Code section 42124 with no amendments to the language of the law. Thus, staff finds that the provision allowing for a general reserve fund as part of the district budget is not a new program or higher level of service than what was required under prior law, nor does the language of the provision create a mandatory program. Thus, staff finds Education Code section 42124 does not constitute a new program or higher level of service, and does not impose costs mandated by the state.

9. Education Code section 42127. This section provides that the governing board of each school district shall accomplish a number of activities on or before July 1 of each year, including holding a public hearing on the budget to be adopted for the subsequent fiscal year, and adopt and file a budget.

In addition, this section requires that the county superintendent of schools shall examine the adopted budget to determine whether it complies with the standards and criteria adopted by the State Board of Education. The superintendent shall identify, if necessary, any technical corrections that must be made to bring the budget into compliance with those standards and criteria. The county superintendent must also determine whether the adopted budget will allow the district to meet its financial obligations during the fiscal year and is consistent with a financial plan that will enable the district to satisfy its multiyear financial commitments. On or before August 15, the county superintendent of schools shall approve or disapprove the adopted budget for each school district. Upon disapproval of a budget, specific follow-up activities are required.

This code section was the subject of a previous Commission decision. In the Statement of Decision for *CSM-4389, Budgeting Criteria and Standards*, the Commission determined that section 42127 was substantively the same as prior law and therefore did not impose a new program or higher level of service. Specifically, the Commission found that “Education Code section 42127 states in pertinent part:

“(a) On or before the first day in July in each year, each school district shall file a tentative budget with the county superintendent of schools ...

“(b) On or before August 1, in each year, based on standards and criteria for fiscal stability established pursuant to Section 33127, the county superintendent of schools:

“(1) Shall examine and make technical corrections to the tentative budget...

“(2) Shall make any recommendations he or she deems necessary to ensure that the district’s budget complies with the standards and criteria ... [established pursuant to Section 33127, and shall transmit to the governing board a written explanation of the reasons for those recommended changes.]

“(d) On or before September 15, the governing board of each school district shall adopt a final budget including any tax requirements ...

“(e) On or before November 1, the county superintendent shall approve or disapprove the adopted final budget for each school district after doing the following:

“(1) Examining the adopted final budget to determine whether it complies with the standards and criteria established pursuant to Section 33127.

“(f) If, after examining the adopted final budget of a school district, it is the opinion of the county superintendent that it does not comply with the standards and criteria established pursuant to Section 33127, he or she shall, by November 1, transmit to the governing board, in writing, [his] or her recommendations and the reasons therefor.”

[(g) The superintendent and governing board, shall, by November 30, do all of the following: (1) Review the recommendations of the county superintendent of schools at a regularly scheduled meeting of the governing board. (2) Respond to the recommendations of the county superintendent. The response shall include the proposed actions to be taken, if any, as a result of the county superintendent’s recommendations.]

The Commission’s decision states that “the Commission found that the requirements of Education Code section 42127 are substantially the same as the requirements contained in Education Code sections 20601, subdivision (a), 20605 and 20651 of Chapter 2/59.”

However due to the fact that Education Code section 42127 has been substantively amended since the decision on *CSM-4389*, staff finds several new activities have been created. In particular, Statutes of 1991, Chapter 1213 made a number of significant changes to section 42127. Prior to this amendment of section 42127, school district governing boards had to provide an annual budget, and county offices of education had supervisory and budget approval activities, but they did not have to engage in some of the specific reporting to the state and other budgetary follow-up activities that the statute now requires. However, staff does find that any changes in the language from requiring adoption and review of a “tentative budget” and then a “final budget,” to a “budget” and, if necessary, a “revised budget,” merely reflect a change in terminology and are not substantive, and therefore not new. Staff notes that school districts for which the county board of education also serves as the governing board are not subject to most of the new requirements of this statute. Staff finds that the following activities do impose a new program or higher level of service, and costs mandated by the state upon all other school districts and county offices of education, to the extent that they are required:

School District Activities:

- Adjusting for the change in deadline for adopting of the revised school district budget, from on or before September 15, to on or before September 8.
- Making available for public review, not later than 45 days after the Governor signs the annual Budget Act, any revisions in revenues and expenditures that it has made to its budget to reflect the funding made available by that Budget Act.

County Office of Education Activities:

- Adjusting for the change in deadline for approval of the revised school district budget, from on or before November 1, to on or before October 8.
- Providing a list to the Superintendent of Public Instruction, on or before September 22, identifying all school districts for which budgets may be disapproved.

- Providing a report to the Superintendent of Public Instruction, on or before October 8, identifying all school districts for which budgets have been disapproved. This report shall include a copy of the written response transmitted to each of those districts when their budget was disapproved.

10. Education Code sections 42127.1 and 42127.2.¹⁸ Section 42127.1 provides that, upon the disapproval of a school district budget by a county superintendent, the county superintendent shall call for the formation of a budget review committee comprised of members selected from a candidate list provided by the Superintendent of Public Instruction. With the approval of the Superintendent of Public Instruction, the district may select a regional review committee instead. This section further provides that members of the budget review committee shall be reimbursed for services and expenses by the CDE. Section 42127.2 provides that the governing board of a school district shall, no later than five days after the receipt of a candidate list from the Superintendent of Public Instruction, select a budget review committee, to be convened within five days by the Superintendent of Public Instruction. If the governing board fails to select a committee, the Superintendent of Public Instruction shall select and convene the committee. This committee shall review the proposed district budget and transmit recommendations on approving the budget or needed revisions. In addition, under section 42127.2, upon request of the county superintendent, the SCO may conduct an audit or review of the fiscal condition of the school district in order to assist a budget review committee for the purposes of this section.

Staff finds that the state has the primary responsibility for the formation of the budget review committee and paying their expenses. Section 42127.1 provides that if a county superintendent disapproves a school district budget, then the county superintendent is to call for the formation of a budget review committee. This section provides that the committee is to be comprised of members selected from *a candidate list provided by the Superintendent of Public Instruction* and that the charges for the expenses and services of this committee *will be reimbursed by the State Department of Education*. Under section 42127.2, if the school district governing board fails to select a committee within five days, then the Superintendent of Public Instruction is required to assemble the committee. Thus, the district board can choose to stay out of the process by failing to take a responsive action to select a committee within five days after receipt of the Superintendent of Public Instruction's candidate list. Also, staff finds that despite the manner in which the committee is created, the costs of the services and expenses of the budget review committee are reimbursed by the CDE.

Also under section 42127.2, the SCO may conduct an additional audit upon a school district at the request of a county superintendent. Government Code section 12410, enacted in 1945, states that the Controller shall superintend the fiscal concerns of the state, and may make such audit of any claim or disbursement of state money as may be appropriate. Although section 42127.2 specifically allows the SCO to perform a special school district audit, the general authority for the SCO to perform audits of entities utilizing state funds is not new. Accordingly, staff finds associated audit costs incurred by a district would not be reimbursable. Thus, staff finds that Education Code sections 42127.1 and 42127.2 do not constitute new programs or higher levels of service, and do not impose costs mandated by the state.

11. Education Code section 42127.3.¹⁹ This section provides that if the budget review committee described above recommends approval of the school district budget, the county

¹⁸ Sections 42127.1 and 42127.2 were added by Statutes of 1988, Chapter 1462.

¹⁹ Section 42127.3 was added by Statutes of 1988, Chapter 1462.

superintendent shall accept the recommendation and approve the budget. If the committee disapproves the budget, the district governing board may submit a response within five days to the Superintendent of Public Instruction. Based on all of the reports and responses, the Superintendent of Public Instruction shall either approve or disapprove the budget. If the Superintendent of Public Instruction disapproves the budget, the county superintendent shall engage in fiscal budgeting, monitoring and review on behalf of the district, as necessary, for the remainder of the fiscal year. This section provides that the school district shall pay 75 percent and the county office of education shall pay 25 percent of the administrative costs associated with improving the district's financial practices.

DOF contends that the provisions of Education Code section 42127.3 constitute "clarifications and establishment of particular procedures already required under section 42127, which the Commission has previously held does not constitute a state mandate." Staff disagrees with this interpretation and finds that prior to the enactment of the test claim legislation Education Code section 42127 provided a date by which the county superintendent "shall approve the adopted budget for each school district," but did not provide for the eventuality of *disapproval* of a district budget.

County Offices of Education. Claimant contends that all of the provisions of section 42127.3 are new and impose costs mandated by the state. However, staff finds, under prior law, Education Code section 1240 provided that the county superintendent of schools shall "[s]uperintend the schools of his county." In addition, staff finds that the specific provisions of Education Code section 42127.3 are only to be imposed "as necessary," as determined by the county superintendent, not the state. To the extent that the fiscal management activities listed under section 42127.3 may be necessary to solve the financial problems of the school district, staff finds they are undertaken at the discretion of the county superintendent of schools. In addition, such suggested activities do not go beyond the traditional duty of the county office of education or county superintendent to "superintend" fiscal management of their school districts. Thus, staff finds that under these circumstances Education Code section 42127.3 does not impose a new program or higher level of service upon county offices of education and costs mandated by the state.

School Districts. However, a question remains whether the provision that the school district shall pay seventy-five percent of the administrative costs associated with improving the district's financial practices constitute a new program or higher level of service and impose costs mandated by the state.

Prior to the test claim legislation there was no specific requirement imposed by the state for school districts to pay county offices of education for seventy-five percent of the administrative costs for improving the district's financial practices. However, the California Supreme Court in *County of Los Angeles*²⁰ held that additional costs alone do not equate to a reimbursable state mandate under section 6, article XIII B. The court held rather, it is paramount that additional costs result from new programs or increased levels of service mandated by the state, stating that:

"If the Legislature had intended to continue to equate 'increased level of service' with 'additional costs,' then the provision would be circular: 'costs mandated by the state' are defined as 'increased costs' due to an 'increased level of service,'

²⁰ *County of Los Angeles, supra*, 43 Cal.3d 46, at 55, 56.

which, in turn, would be defined as ‘additional costs.’ We decline to accept such an interpretation.”²¹

The California Supreme Court affirmed its holding in *County of Los Angeles* in a subsequent case, *Lucia Mar Unified School Dist. v. Honig*, stating:

“We recognize that, as is made indisputably clear from the language of the constitutional provision, local entities are not entitled to reimbursement for all increased costs mandated by state law, but only those costs resulting from a new program or an increased level of service imposed upon them by the state.”²²

In *City of San Jose v. State of California*²³ as well as in *County of Los Angeles*, a new program or higher level of service does not exist when a shift in costs occurs between local entities. The court stated the following:

“[N]othing in article XIII B prohibits the shifting of costs between local governmental entities.”²⁴ [Emphasis added.]

Staff finds the test claim statute merely shifted the portion of the costs of fiscal management, formerly borne by the county office of education, a local agency, on to the school districts, another local agency, a shift, which does *not* require reimbursement under section 6, article XIII B. Although school districts can show additional costs corresponding to the absorption of seventy-five percent of the county office of education’s administrative costs for engaging in fiscal management activities, there is *no* new service or activity imposed upon school districts by the test claim statute.

Therefore, in accordance with the foregoing authorities, staff finds that Education Code section 42127.3 does not impose a new program or higher level of service, and does not impose costs mandated by the state.

12. Education Code section 42127.4.²⁵ This section provides that until a school district budget is approved, the district shall continue to operate under its last adopted budget or under the unapproved budget for the current fiscal year, whichever provides a lower spending authority.

School districts were required by prior law to adopt and operate under an annual budget. The provisions of section 42127.4 require that, in the event that the school district does not have an approved annual budget, they continue to operate under their previous year’s approved budget, or under the newer unapproved budget, if it provides for a lower level of spending. There is no evidence that this section imposes a new program or higher level of service, as it requires that the school district continue to operate in the most fiscally responsible manner until a new budget is adopted. It is also unclear as to how this section imposes costs upon a school district or county office of education, as it simply requires utilization of whichever school district budget provides for a lower level of spending. Accordingly, staff finds, based upon its review of the record, Education Code section 42127.4 does not impose a new program or higher level of service, and does not impose costs mandated by the state.

²¹ *Id.*

²² *Lucia Mar, supra*, 44 Cal.3d 830, at 835.

²³ *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802.

²⁴ *Id.* at 1815.

²⁵ Section 42127.4 was added by Statutes of 1988, Chapter 1462.

13. Education Code section 42127.5.²⁶ This section provides that the governing board of a district reporting a negative unrestricted fund balance or a negative cash balance shall include a statement with the budget explaining the reason for the negative balance and the steps taken to ensure that by the end of the current fiscal year there will not be a negative balance.

Prior to the enactment of section 42127.5, the governing board of a district did not have a specified legal requirement to include a statement with the budget explaining a negative balance and the steps taken to change the situation by the end of the current year. The statutory requirement imposes a new duty upon school district governing boards that have a reportable negative balance. Therefore, staff finds that Education Code section 42127.5 imposes a new program or higher level of service, and costs mandated by the state upon school districts, for the following activity:

- Drafting a statement of correction when the district incurs a negative balance.

14. Education Code section 42127.6.²⁷ This section provides that if a county superintendent of schools determines that the district is unable to meet its financial obligations for the current or two subsequent fiscal years, or if the district has a qualified or negative certification pursuant to section 42131, as further discussed below, the county superintendent shall notify the Superintendent of Public Instruction in writing of the determination and engage in studies, assign experts, report, monitor and review district financial practices, as necessary. This section further provides that the school district shall pay 75 percent and the county office of education shall pay 25 percent of the administrative costs associated with improving the district's financial management practices. This section also allows a school district to appeal the decisions of the county superintendent to the Superintendent of Public Instruction.

Staff finds under prior law, Education Code section 1240 provided that the county superintendent of schools shall “[s]uperintend the schools of his county.” Staff finds this general directive does not encompass the specific new activity required for notifying the school district governing board and the Superintendent of Public Instruction, in writing, of the determination that the district is unable to meet its financial obligations. Therefore, staff finds that section 42127.6 imposes a new program or higher level of service, and costs mandated by the state for the notification activity described above.

However, staff finds that the other provisions of Education Code section 42127.6 are only to be imposed “as necessary,” as determined by the county superintendent, not the state. To the extent that the fiscal management activities listed under section 42127.6 may be necessary to solve the financial problems of the school district, they are undertaken at the discretion of the county superintendent of schools. Such activities do not go beyond the traditional duty of the county office of education or county superintendent to “superintend” fiscal management of their school districts. Thus, staff finds that a reimbursable state mandate is imposed on county offices of education only for the initial notification activities required by section 42127.6, and that all other activities described under the section are undertaken at the discretion of the county superintendent of schools, and do not extend beyond their fundamental duty to superintend. Therefore, the remaining provisions of section 42127.6 do not impose new programs or higher levels of service, and do not impose costs mandated by the state.

²⁶ Section 42127.5 was added by Statutes of 1986, Chapter 1150.

²⁷ Section 42127.6 was added by Statutes of 1993, Chapter 924, replacing a similar section added by Statutes of 1991, Chapter 1213.

Prior to the test claim legislation there was no specific requirement imposed by the state for school districts to reimburse county offices of education for seventy-five percent of administrative costs associated with improving the district's financial practices. This issue was fully analyzed above in respect to section 42127.3, but in brief, staff finds that the test claim statute does not impose a reimbursable state mandated program upon school districts because "local entities are not entitled to reimbursement for all increased costs mandated by state law, but only those costs resulting from a new program or an increased level of service imposed upon them by the state."²⁸ Although school districts can show additional costs corresponding to the absorption of seventy-five percent of the county office of education's administrative costs for engaging in fiscal management activities, there is *no* new service or activity imposed upon school districts by the test claim statute.

Thus, staff finds that Education Code section 42127.6 imposes a new program or higher level of service, and costs mandated by the state upon county offices of education, for the following activity:

- Notifying the Superintendent of Public Instruction in writing if a county superintendent of schools determines that a school district is unable to meet its financial obligations for the current or two subsequent fiscal years, or if the district has a qualified or negative certification pursuant to Section 42131.

15. Education Code section 42127.9.²⁹ This section provides that, no later than five days after a school district receives notice of any changes in the district's budget adopted by the county superintendent of schools, the governing board of the district may appeal to the Superintendent of Public Instruction.

Section 42127.9 provides the school district governing board with a timeframe and *the right to file an appeal* with the state regarding certain actions taken by a county superintendent. This code section *allows* for an appeal but does not *require* the appeal or any activity or particular course of action associated with filing an appeal by a school district governing board or by the county office of education. Therefore, staff finds that section 42127.9 does not constitute a new program or higher level of service, and does not impose costs mandated by the state.

16. Education Code section 42128. This section provides that if the governing board of any school district neglects or refuses to make a school district budget as prescribed by this article, or neglects to file interim reports pursuant to Section 42130, the county superintendent shall not make any apportionment of state or county school money for the particular school district for the current school year, and the county superintendent shall notify the appropriate county official that he or she shall not approve any warrants issued by the school district.

Statutes of 1976, Chapter 1010, renumbered and reenacted former Education Code section 20608 as Education Code section 42128. There have been two subsequent amendments to prior law. Statutes of 1993, Chapter 924 added the clause requiring the county superintendent to notify the appropriate county official that the county official shall not approve warrants issued by the school district. Statutes of 1995, Chapter 525 added the clause "or neglects to file interim reports pursuant to Section 42130." The primary language of section 42128, requiring a county superintendent to refuse to make an apportionment to school districts out of compliance with certain budget requirements, is the same as prior law.

²⁸ *Lucia Mar, supra*, 44 Cal.3d 830, at 835.

²⁹ Section 42127.9 was added by Statutes of 1991, Chapter 1213.

However, under prior law there was no requirement for the county superintendent to notify “the appropriate county official” not to approve warrants issued by the school district. Accordingly, staff finds the amendment of section 42128 by Statutes of 1993, Chapter 924 imposes a new program or higher level of service, and imposes costs mandated by the state upon county offices of education for the following new activity:

- Notifying appropriate county officials that he or she shall not approve any warrants issued by the school district, whenever a school district has not made a budget or filed the interim reports required by section 42130.

17. Education Code section 42129.³⁰ This section provides that school districts and county offices of education shall timely transmit to the CDE all budget and financial reports required by statute. If the reports are not submitted within 14 days after the due date, the Superintendent of Public Instruction may direct the county auditor to withhold payment of any stipend, expenses or salaries to the district superintendent, county superintendent, or governing board members, as appropriate. The withholding shall continue only until the delinquent reports have been submitted to the Superintendent of Public Instruction.

Section 42129 provides for a possible penalty upon district and county office of education officials if statutorily required budget and financial reports are not submitted to the state in a timely manner. The law allows the Superintendent of Public Instruction to withhold payroll and expense payments to local superintendents and/or board members until the required reports are submitted. Staff finds that this penalty provision does not require a new activity or impose a new duty, and the penalty to the officials may be avoided or reversed by submittal of the budgetary reports. Therefore, staff finds that Education Code section 42129 does not constitute a new program or higher level of service, and does not impose costs mandated by the state.

18. Education Code section 42131.³¹ This section provides that the governing board of each school district shall positively, qualifiedly, or negatively certify, in writing, within 45 days after the close of the reporting period, whether or not the district is able to meet its financial obligations for the remainder of the fiscal year and the subsequent fiscal year. These certifications shall be sent to the county office of education. If the county office of education receives a positive certification, but determines that a negative or qualified certification should have been filed, the county superintendent shall change the certification, as appropriate, and notify the district and the Superintendent of Public Instruction within 75 days of the close of the reporting period.

DOF argues that this section does not mandate any new program or higher level of service, but instead constitutes part of the long-standing traditional duties of school districts and county offices of education to report financial and fiscal information to the Superintendent of Public Instruction. Staff disagrees and finds that Education Code section 42131, as added by Statutes of 1987, Chapter 1452, while associated with traditional budget activities, constitutes an entirely new program. Before the enactment of this section, school district governing boards had to provide an annual budget, as well as create and provide financial and budgetary status reports, but they did not have to specifically certify and report to the county office of education regarding their ability to meet future financial obligations. The reporting activities associated with the

³⁰ Section 42129 was added by Statutes of 1986, Chapter 1150.

³¹ Section 42133 was added by Statutes of 1987, Chapter 1452 as section 35014, amended by Statutes of 1988, Chapter 1462 and amended and renumbered by Statutes of 1991, Chapter 1213.

certification process are new to both the school district and the county office of education. There are additional activities associated with a qualified or negative certification that also exceed the traditional duties of local educational agencies. Staff notes that school districts for which the county board of education also serves as the governing board are not subject to the requirements of this statute. Staff finds that the following activities impose a new program or higher level of service, and costs mandated by the state on all other school districts and county offices of education, to the extent that they are required:

School District Activities:

- Certifying in writing, either positively, qualifiedly or negatively, within 45 days after the close of the period being reported, whether the school district is able to meet its financial obligations for the remainder of the fiscal year and, based on current forecasts, for the subsequent fiscal year.
- Filing with the county superintendent of schools a copy of the financial obligation certification, and a copy of the report submitted to the district governing board pursuant to Section 42130.
- Providing to the county superintendent of schools, the Controller, and the Superintendent of Public Instruction, no later than June 1, financial statement projections of the district's fund and cash balances through June 30 for the period ending April 30. This is only applicable to a school district that has a qualified or negative financial certification.

County Office of Education Activities:

- Changing the school district financial certification to negative or qualified, as appropriate, if a county office of education receives a positive certification from school district, when a negative or qualified certification should have been filed. Providing notice of that action to the governing board of the school district and to the Superintendent of Public Instruction, within 75 days after the close of the applicable reporting period.
- Sending copies of any certification in which the governing board is unable to certify unqualifiedly that financial obligations will be met, and a copy of the report submitted to the governing board pursuant to Section 42130 to the Controller and the Superintendent of Public Instruction at the time of the certification, together with a completed transmittal form provided by the Superintendent of Public Instruction.
- Submitting to the Superintendent of Public Instruction and the Controller the county superintendent's comments on those school district financial certifications that are classified as qualified or negative, and reporting any action proposed or taken, within 75 days after the close of the applicable reporting period.
- Reporting to the Controller and the Superintendent of Public Instruction as to whether the governing board of each of the school districts under their jurisdiction has submitted the certification required, within 75 days after the close of the applicable reporting period. That report shall account for all districts under the jurisdiction of the county office of education and indicate the type of certification filed by each district.

19. Education Code section 42133.³² This section provides that a school district or county office of education that has a qualified or negative certification in any fiscal year may not issue, in that fiscal year or in the next succeeding fiscal year, certificates of participation, tax anticipation notes, revenue bonds, or any other debt instruments without voter approval, nor may the local educational agency submit an information report regarding the debt instrument unless the county superintendent, or in the case of County offices of education, the Superintendent of Public Instruction, determines that repayment of the debt is probable.

Staff finds that section 42133 does not impose any new activities, duties or requirements; rather it prohibits school districts or County offices of education, found to be unable to meet current financial obligations, from incurring further debt without prior voter approval or state approval. Therefore, staff finds Education Code section 42133 does not constitute a new program or higher level of service, and does not impose costs mandated by the state.

20. Government Code section 3540.2.³³ This section provides that a school district that has a qualified or negative certification is to allow the county office of education at least six working days to review and comment on any proposed agreement made between the exclusive representative and the public school employer or the employer's representatives. The school district shall provide the county superintendent of schools with all information relevant to the financial impact of any collective bargaining agreement. The Superintendent of Public Instruction shall develop a format for use by the appropriate parties in generating the financial information required. The county superintendent of schools shall notify the school district publicly within those six days, if in his or her opinion, the agreement reviewed would endanger the fiscal well being of the school district.

The language of the code section allows the county office of education, at the county office of education's discretion, to review and comment on any proposed agreement made between the exclusive representative and the public school employer or the employer's representatives, but does not require it. If the county office of education decides to review the collective bargaining agreement as provided for in this section, then the section requires that the county superintendent of schools *shall* notify the school district publicly within those six days, if in his or her opinion, the agreement reviewed would endanger the fiscal well-being of the school district. Since any public notification stems from a discretionary review, staff finds the activity is not a reimbursable state mandate to County offices of education. To the extent that a school district is required under this section to provide additional information relevant to the financial impact of a collective bargaining agreement, in a format developed by the Superintendent of Public Instruction, staff finds a new program has been created. Accordingly, staff finds Government Code section 3540.2 imposes a new program or higher level of service, and costs mandated by the state upon school districts for the following new activity:

- Providing the county superintendent of schools with all information relevant to the financial impact of any collective bargaining agreement, in the format developed by the Superintendent of Public Instruction, as specifically requested by the county office of education. This is only applicable to a school district that has a qualified or negative certification pursuant to Education Code section 42131.

³² Section 42133 was added by Statutes of 1991, Chapter 1213.

³³ Government Code section 3540.2 was added by Statutes of 1993, Chapter 924 and amended by Statutes of 1994, Chapter 650.

IV. Test Claim Executive Orders

In addition to the test claim statutes, claimant also maintains that California Code of Regulations, Title 5 sections 15440-15466, as well as several Fiscal Management Advisories issued by the CDE impose reimbursable mandates. Under Government Code section 17516, an “executive order” may include “any order, plan, requirement, rule, or regulation issued by . . . any agency, department, board, or commission of state government.” Thus, pursuant to Government Code section 17516, regulations and Fiscal Management Advisories issued or promulgated by the CDE are included in the definition of an executive order. However, the Commission must still determine if the executive order imposes a new program or higher level of service, or costs mandated by the state.

A. CDE Management Advisories

Claimant alleges CDE Management Advisories (Advisories) 86-02, 86-03, 87-01, 88-01, 88-10, 92-03, 92-06, 92-07, 92-08, 93-02, 94-02, 94-07, and 96-08 all constitute reimbursable state mandates. Staff notes that Education Code section 33308.5, as added by Statutes of 1983, Chapter 498, explains, in pertinent part:

“Program guidelines issued by the State Department of Education shall be designed to serve as a model or example, and shall not be prescriptive. Program guidelines issued by the department shall include written notification that the guidelines are merely exemplary and that compliance with the guidelines is not mandatory.”

Of the thirteen remaining Advisories included in this test claim seven of the Advisories, 92-03, 92-06, 92-07, 92-08, 94-02, 94-07, and 96-08, all contain the caveat of Education Code section 33308.5, that “to the extent that this Management Advisory contains guidelines in addition to recitation of the law, the guidelines are exemplary only and compliance with them is not mandatory.” Thus, on the face of the Advisories, the CDE has clearly stated that these Advisories do not constitute mandates. In addition, staff notes that each of these Advisories, with the exception of Advisories 92-06, 92-08, and 96-08, are all recitations and summaries of legislation recently adopted. Advisory 92-06, referring to Statutes of 1991, Chapter 1213, explains the standards for reasonable fees set forth in Chapter 1213. Advisory 92-08, also referring to Statutes of 1991, Chapter 1213, sets forth the criteria for what constitutes “long term debt.” Advisory 96-08 is an update of Standardized Accounting Codes, the subject of test claim 97-TC-17, *Standardized Account Code Structure*, which is pending before the Commission. Thus, based on the content of these Advisories, staff finds that, even if the caveat had not been included, these Advisories do not constitute new programs or higher levels of service, and do not impose costs mandated by the state.

The remainder of the Advisories provide a recitation or summaries of legislation recently adopted. Accordingly, based on the content of these Advisories, staff finds that these Advisories do not constitute new programs or higher levels of service, and impose costs mandated by the state.

B. California Code of Regulations, Title 5, Sections 15440-15446

Claimant alleges that sections 15440-15446 of Title 5 of the California Code of Regulations, effective July 1, 1991, constitute executive orders, which impose a new program or higher level of service and impose costs mandated by the state. Staff notes that these regulations are a restatement of Advisories 89-02 and 90-4³⁴ which set forth a two-tiered approach for review of budgets and financial reports required to be filed with the Superintendent of Public Instruction.

These two Advisories, which were not included in this present test claim, were considered by the Commission in *CSM-4389, Budgeting Criteria and Standards*. In the Commission's Statement of Decision for *Budgeting Criteria and Standard*, adopted August 22, 1991, the Commission found that the criteria and standards set forth in Advisories 89-02 and 90-4 met the standards of an executive order. However, after comparing these Advisories with the budget forms in place before the issuance of these Advisories, the Commission concluded that the standards and criteria set forth in these Advisories were developed from forms which the school districts had previously used. The Commission further noted that the criteria and standards contained in these Advisories reflected the "standardization of a review process agreed to by representatives from districts, county offices, teachers unions and other state agencies."³⁵ Accordingly, the Commission concluded these Advisories did not constitute a new program or higher level of service.³⁶ Additionally, the Commission found that fiscal accountability by school districts is not a new program or higher level of service.³⁷

Based on the foregoing, staff concludes that the duties imposed under Title 5, sections 15440-15446 were required prior to their adoption and accordingly, they do not constitute a new program or higher level of service, and do not impose costs mandated by the state.

Conclusion and Recommendation

Staff concludes that Education Code sections 42100, 42127, 42127.5, 42127.6, 42128 and 42131 and Government Code section 3540.2 require some new activities, as specified, which constitute new programs or higher levels of service within existing programs upon school districts and/or county offices of education within the meaning of section 6, article XIII B of the California Constitution and impose costs mandated by the state pursuant to Government Code section 17514. Accordingly, staff recommends that the Commission approve this test claim for the following specific new activities required to comply with the budget process:

School District Activities:

- Sending a statement of receipts and expenditures for the preceding fiscal year to the county superintendent of schools. (Ed. Code, § 42100.)³⁸
- Adjusting for the change in deadline for adopting the revised school district budget, from on or before September 15, to on or before September 8. (Ed. Code, § 42127.)³⁹

³⁴ These Advisories are attached as Exhibits L and M, respectively.

³⁵ *CSM-4389, Budgeting Criteria and Standards*, statement of decision, page 12.

³⁶ *Id.*, at 13.

³⁷ *Id.*, at 13.

³⁸ As amended by Statutes of 1981, Chapter 100.

³⁹ As amended by Statutes of 1991, Chapter 1213; Statutes of 1992, Chapter 323, Statutes of 1993, Chapter 923.

- Making available for public review, not later than 45 days after the Governor signs the annual Budget Act, any revisions in revenues and expenditures that it has made to its budget to reflect the funding made available by that Budget Act. (Ed. Code, § 42127.)
- Drafting a statement of correction when the district incurs a negative balance. (Ed. Code, § 42127.5.)⁴⁰
- Certifying in writing, either positively, qualifiedly or negatively, within 45 days after the close of the period being reported, whether the school district is able to meet its financial obligations for the remainder of the fiscal year and, based on current forecasts, for the subsequent fiscal year. (Ed. Code, § 42131.)⁴¹
- Filing with the county superintendent of schools a copy of the financial obligation certification, and a copy of the report submitted to the district governing board pursuant to Section 42130. (Ed. Code, § 42131.)
- Providing to the county superintendent of schools, the Controller, and the Superintendent of Public Instruction, no later than June 1, financial statement projections of the district's fund and cash balances through June 30 for the period ending April 30. This is only applicable to a school district that has a qualified or negative financial certification. (Ed. Code, § 42131.)
- Providing the county superintendent of schools with all information relevant to the financial impact of any collective bargaining agreement, in the format developed by the Superintendent of Public Instruction, as specifically requested by the county office of education. This is only applicable to a school district that has a qualified or negative financial certification. (Gov. Code, § 3540.2.)⁴²

County Office of Education Activities:

- Verifying the mathematical accuracy of the school district statement of receipts and expenditures for the preceding fiscal year. (Ed. Code, § 42100.)
- Sending a copy of the verified school district statement of receipts and expenditures for the preceding fiscal year to the Superintendent of Public Instruction. (Ed. Code, § 42100.)
- Adjusting for the change in deadline for approval of the revised school district budget, from on or before November 1, to on or before October 8. (Ed. Code, § 42127.)
- Providing a list to the Superintendent of Public Instruction, on or before September 22, identifying all school districts for which budgets may be disapproved. (Ed. Code, § 42127.)
- Providing a report to the Superintendent of Public Instruction, on or before October 8, identifying all school districts for which budgets have been disapproved. This report shall include a copy of the written response transmitted to each of those districts when their budget was disapproved. (Ed. Code, § 42127.)

⁴⁰ As added by Statutes of 1986, Chapter 1150.

⁴¹ As added by Statutes of 1987, Chapter 1452, and amended by Statutes of 1988, Chapter 1462; Statutes of 1991, Chapter 1213; Statutes of 1993, Chapter 923; Statutes of 1994, Chapter 1002; and Statutes of 1995, Chapter 525.

⁴² As added by Statutes of 1993, Chapter 924 and amended by Statutes of 1994, Chapter 650.

- Notifying the Superintendent of Public Instruction in writing if a county superintendent of schools determines that a school district is unable to meet its financial obligations for the current or two subsequent fiscal years, or if the district has a qualified or negative certification pursuant to Section 42131. (Ed. Code, § 42127.6.)⁴³
- Notifying appropriate county officials that he or she shall not approve any warrants issued by the school district, whenever a school district has not made a budget or filed the interim reports required by section 42130. (Ed. Code, § 42128.)⁴⁴
- Changing the school district financial certification to negative or qualified, as appropriate, if a county office of education receives a positive certification from school district, when a negative or qualified certification should have been filed. Providing notice of that action to the governing board of the school district and to the Superintendent of Public Instruction, within 75 days after the close of the applicable reporting period. (Ed. Code, § 42131.)
- Sending copies of any certification in which the governing board is unable to certify unqualifiedly that financial obligations will be met, and a copy of the report submitted to the governing board pursuant to Section 42130 to the Controller and the Superintendent of Public Instruction at the time of the certification, together with a completed transmittal form provided by the Superintendent of Public Instruction. (Ed. Code, § 42131.)
- Submitting to the Superintendent of Public Instruction and the Controller the county superintendent's comments on those school district financial certifications that are classified as qualified or negative, and reporting any action proposed or taken, within 75 days after the close of the applicable reporting period. (Ed. Code, § 42131.)
- Reporting to the Controller and the Superintendent of Public Instruction as to whether the governing board of each of the school districts under their jurisdiction has submitted the certification required, within 75 days after the close of the applicable reporting period. That report shall account for all districts under the jurisdiction of the county office of education and indicate the type of certification filed by each district. (Ed. Code, § 42131.)

Staff recommends denial of all remaining test claim issues, code sections and executive orders because they do not constitute a new program or higher level of service, and do not impose costs mandated by the state.

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⁴³ As added by Statutes of 1993, Chapter 924.

⁴⁴ As amended by Statutes of 1993, Chapter 924.